

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION No. 12085 of 2001****For Approval and Signature:****HONOURABLE MR.JUSTICE KS JHAVERI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
  - 5 Whether it is to be circulated to the civil judge ?

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**GUJARAT MARITIME BOARD & 2 - Petitioner(s)**  
**Versus**  
**BHUPATBHAI GHELABHAI MAKWANA - Respondent(s)**

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**Appearance :**

MS SEJAL K MANDAVIA for Petitioner(s) : 1 - 3.  
MR DIPAK R DAVE for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE KS JHAVERI****Date : 01/12/2005****ORAL JUDGMENT**

1. By way of this petition, the petitioner has challenged the award dated 30.07.2001 passed by the Labour Court, Junagadh in reference (LCB) No.132/1989 whereby the Labour Court has directed the petitioners to

reinstate the respondent with continuity of service and 75% backwages. A cost of Rs. 1500/- was also awarded as cost of litigation to the respondent.

2. The brief facts of the case are that the respondent was appointed on 17.09.1984 on fixed term basis. He was given work for the period from 01.12.1986 to 30.04.1987 and thereafter the port was closed because of rainy season. The respondent was provided with work again for the period from 11.07.1987 to 30.11.1987 in different phases. Thereafter, the respondent was not provided with any work. Being aggrieved by this, the respondent raised an industrial dispute which was in turn referred to the Labour Court, Junagadh. The Labour Court passed the aforesaid award.

3. Learned counsel for the petitioner submitted that there is no necessity to give one month's notice to the respondent before termination because he was not a daily wager but was appointed purely on fixed term basis. He further submitted that in the deposition of the respondent, he himself has admitted that he was engaged in the business of diamond cutting. Therefore, the Labour Court ought not to have granted the backwages to

the respondent.

4. This court while admitting the matter has stayed only backwages and had directed the petitioner to reinstate the respondent. Interim relief was not granted qua reinstatement. Subsequently, the respondent has already been reinstated. In that view of the matter, the only question which was left open for consideration by this court is qua backwages. The Labour Court has considered the evidence on record in detail and has come to the conclusion that the respondent workman is required to be reinstated. I am in complete agreement with the reasonings adopted and the findings arrived at by the Labour Court. Therefore, in my opinion, the order of reinstatement is not required to be interfered.

5. However, from the award it appears that the Labour Court has granted backwages without giving any cogent and valid reasons. Backwages were granted merely on assumption without any concrete finding inspite of the fact that the respondent workman was gainfully employed in a diamond factory and was earning Rs.9-10 per piece. As a result, I am of the opinion that the order of backwages is required to be quashed and set aside. Moreover, the law on the subject is well settled. In the

case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order. Paragraphs 10, 11 and 12 read as under:

"10. In Smt. Saran Kumar Gaur and others V. State of Uttar Pradesh and others, this Court observed that when work is not done remuneration is not to be paid and accordingly did not make any direction for award of past salary. In State of U.P. And Anr. V. Atal Behari Shastri and Anr, a termination order passed on 15.7.1970 terminating the services of a Licence Inspector was finally quashed by the High Court in a writ petition on 27.11.1991 and a direction was issued to pay the entire back salary from the date of termination till the date of his attaining superannuation. This Court, in absence of a clear finding that the employee was not gainfully employed during the relevant period, set aside the order of the High Court directing payment of entire back salary and substituted it by payment of a lump-sum amount of Rs.25,000/-. In Virender Kumar, General Manager, Northern Railways, New Delhi V. Avinash Chandra Chadha and others, there was a dispute regarding seniority and promotion to a higher post. This Court did not make any direction for payment of higher salary for the past period on the principle "no work no 'ay" as the respondents had actually not worked on the higher post to which

they were entitled to be promoted. In *Surjit Ghosh V. Chairman and Managing Director, United Commercial Bank and others*, the appellant (Assistant Manager in the Bank) was dismissed from service on 28.5.1985, but his appeal was allowed by this Court on 6.2.1995 as his dismissal order was found to be suffering from an inherent defect. His claim for arrears of salary for the past period came to about Rs.20 lacs but this Court observed that a huge amount cannot be paid to anyone for doing no work and accordingly directed that a compensation amount of Rs.50000/- be paid to him in lieu of his claim for arrears of salary. In *Anil Kumar Gupta V. State of Bihar*, the appellants were employed as daily wage employees in Water and Land Management Institute of the Irrigation Department of Government of Bihar and they were working on the posts of steno-typist, typists, machine operators and peons, etc. This Court allowed the appeal of the workmen and directed reinstatement but specifically held that they would not be entitled to any past salary. These authorities show that an order for payment of back wages should not be passed in a mechanical manner but host of factors are to be taken into consideration before passing any order for award of back wages.

11. In the case in hand the respondent had worked for a very short period with appellant, which was less than one year. Even during this period there were breaks in service and he had been given short term appointments on daily wage basis in different capacities. The respondent is not a technically trained person, but was working on a class IV post. According to the finding of the Industrial Tribunal-cum-Labour Court plenty of work of the same nature, which the respondent was doing, was available in the District of Rohtak. In such circumstances we are of the opinion that the respondent is not entitled to payment of any back wages.

12. The appeal is accordingly partly allowed and the award of the Industrial Tribunal-cum-Labour Court insofar as it directs reinstatement with continuity of service is upheld by the award regarding payment of 50% back wages is set aside."

7. In the premises aforesaid, the award granting backwages is quashed and set aside. The award of reinstatement with continuity of service is confirmed. The order of the Labour Court is modified to the above extent. Rule is made absolute accordingly with no order as to costs.

(K.S. JHAVERI, J.)

Divya//